



# Office of General Counsel ETHICS TRAINING 2012

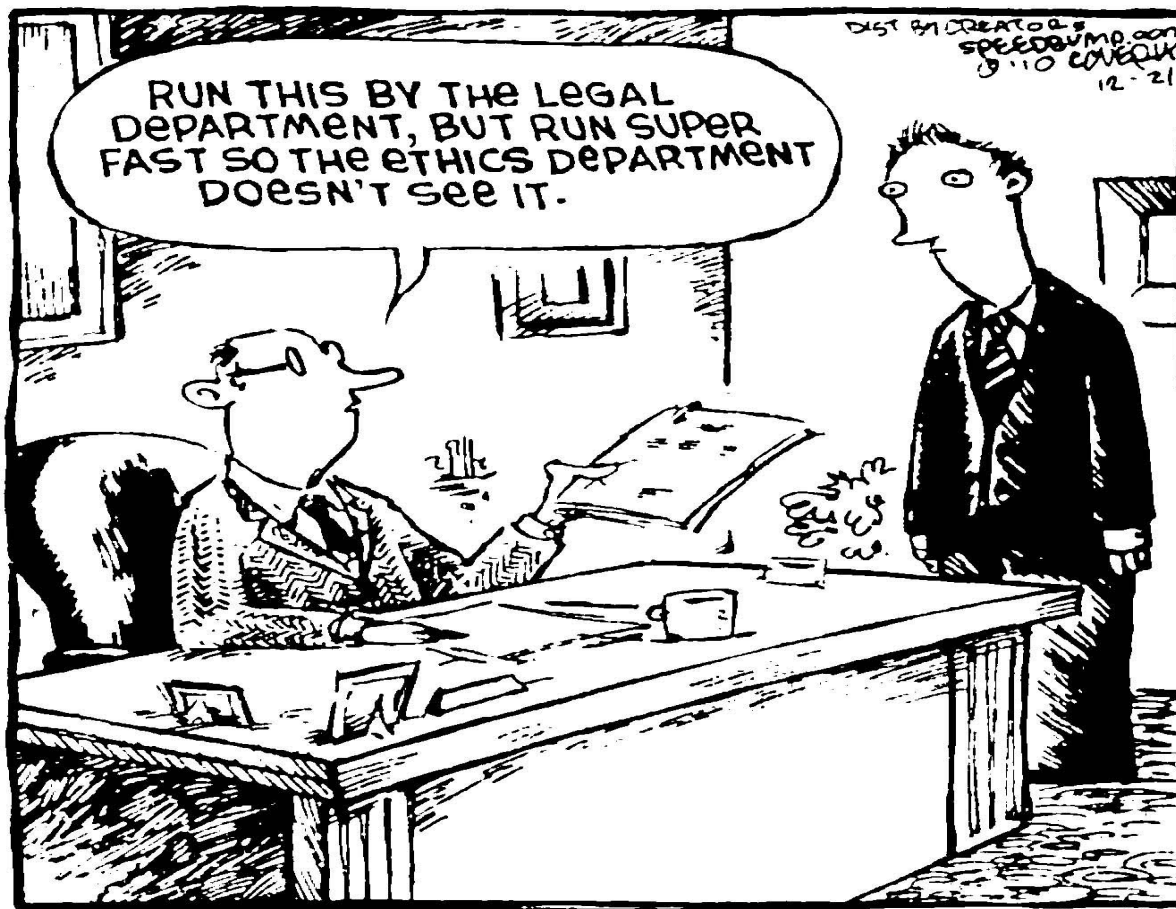
[Contact: usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil](mailto:usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil)



Don't follow this advice...we're here to help

**SPEED BUMP**

**DAVE COVERLY**





# Why should you get advice from an Ethics Counselor?



- You will receive “Safe harbor”
  - If an employee seeks advice before taking action, makes a full and accurate disclosure of the facts and circumstances and acts in good faith reliance upon the advice of the Ethics Counselor, administrative disciplinary action for violating the Standards of Ethical Conduct will not be taken against the employee if the ethics advice is later determined to be incorrect
- The Fine Print:
  - Ethics Attorneys always remain representatives of the Federal Government; ethics advice does not create an attorney-client relationship



# 14 Principles of Ethical Conduct

## Executive Order 12674

1. Place public service above private gain
2. Financial interests cannot conflict with official duties
3. Do not use non-public information for private gain
4. No gifts from prohibited sources
5. Employees must put forth honest effort in performance of duties
6. No unauthorized promises purporting to bind the government
7. Do not use public office for private gain
8. Act impartially and no preferential treatment
9. Protect and conserve government property and only use it for authorized purposes
10. No outside employment or job hunting that conflicts with Federal job
11. Obligated to disclose waste, fraud, and abuse
12. Satisfy financial obligations in good faith
13. Uphold EEO laws and regulations
14. Avoid appearance of unethical conduct/violating the law or ethics regulations



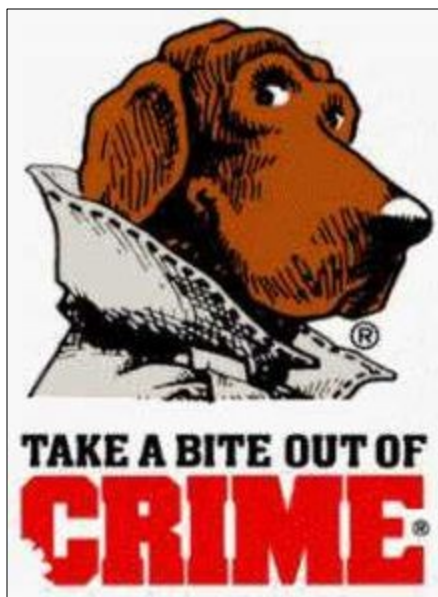
## Goals / Agenda

- 14 Principles of Ethical Conduct
- Overview of Key Ethics Rules and Criminal Statutes
- Hatch Act (Political Activities)
- Stock Act
- Post-Government Employment





# Review of Key Criminal Statutes





# Bribery

- **18 U.S.C. § 201** – Prohibits Public Officials From:
  - Seeking, receiving or agreeing to accept
  - Anything of value
  - For themselves or others
  - \*\* in return for being
    - influenced to aid in any fraud on the US, or
    - induced to do (or omit to do) any act in violation of official duty
  - **Maximum penalty: fine of \$250,000 or not more than three times the monetary equivalent of the thing of value, whichever is greater, fifteen years in prison, and disqualification from holding any office of honor, trust, or profit under the United States**

\*\* This element is not required proof of an Illegal Gratuities



# 18 U.S.C. §§ 203 and 205

## “Representing Back”

- 18 U.S.C. § 203

Government employees may not accept outside compensation for services that include representing a third party before the Government

- 18 U.S.C. § 205

It is also unlawful to assist a third party in presenting claims to or against the Government whether compensated or not

- **Exceptions** – an employee may represent:

- Himself/Herself
  - But NOT a business entity the employee has incorporated
- Family members
- An estate
- Other employees in personnel actions, including EEO activities
- Organizations composed primarily of employees or their dependents.





# Representation Restrictions

## 18 U.S.C. §§ 203 and 205

“Representation” is

1. a communication
2. made on another’s behalf
3. with intent to influence a government employee acting in his official capacity
4. where the communication concerns a particular issue, contract, or controversy



# Gazette.Net

## **Potomac man pleads guilty to federal ethics violations**

Monday,

Feb. 14, 2011

### **D.C.-based lawyer failed to report he worked for both federal government and military contractor**

by Alex Ruoff | Staff Writer

A Potomac lawyer faces up to 10 years in jail after he pleaded guilty Monday to criminal conflict of interest and filing a false disclosure form when he worked as both a legal counsel for the federal government and a representative of a foreign corporation trying to sell military hardware to the U.S. Army, according to the U.S. Attorney for the District Court of Maryland. Jeffrey Ross Williams, 51, of Potomac was charged in December for earning money from an unnamed company lobbying to supply the U.S. Army while employed as an attorney with the Consumer Product Safety Commission, a Bethesda-based federal agency.

Williams held a dual position with the commission as an assistant general counsel for enforcement and information and assistant general counsel for regulatory affairs, between 2005 and 2008, according to his plea entered in U.S. District Court in Greenbelt. The Consumer Product Safety Commission tests and reports on the safety of products such as toys, power tools and household chemicals.

Williams earned an \$8,000 per month retainer through the Washington-D.C. based law firm he founded, Williams Law Firm, PLLC, which represented the foreign company in 2006 while it tried to reach an agreement with the U.S. Army to supply it with batteries for armored personnel vehicles, wrote U.S. Attorney Rod Rosenstein in a Dec. 13 outline of charges.

As a federal employee, Williams was required to disclose his position with the foreign company and the income he earned, U.S. Department of Justice spokeswoman Marcia Murphy wrote in a statement.



# Conflicts of Interest

## 18 U.S.C. § 208

- Employees may not participate personally and substantially through decision, approval, recommendation, advice, investigation or otherwise
  - In a judicial proceeding, application, ruling, determination, contract, claim, controversy, charge, or other particular matter
  - In which the employee or their spouse, minor child, partner, organization in which the employee is an officer or employee, or company with whom the employee is negotiating for employment
  - Has a financial interest
- A particular matter is a matter that involves deliberation, decision or action that is focused on the interests of specific persons or a discrete and identifiable class of persons



# Resolving Conflicts of Interest

## Disqualification

- Stop working on actions relating to the matter
- Submit a written disqualification statement to Supervisor.

## Rejection of Job Prospect/Resignation

- Decline a job prospect or resign from an outside position
- Verbal or email rejection or resignation is sufficient
- If the conflict is related to a procurement, written rejection of a job prospect may be required

## Divest Conflicting Financial Interest

- Sell the stock or other financial interest which caused the conflict
- If you are directed to sell, contact the Ethics Office before the sale, as you may be eligible for a Certificate of Divestiture from the Office of Government Ethics.

## Waiver



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THE UNITED STATES ATTORNEY'S OFFICE  
EASTERN DISTRICT *of* VIRGINIA

## **Newport News Woman Pleads Guilty to Conflict of Interest at NASA**

FOR IMMEDIATE RELEASE

June 2, 2010

NEWPORT NEWS, Va. – Patricia M. Biondolillo, 50, of Newport News, Va., pleaded guilty today to using her position as a NASA employee to gain employment for her husband at the Langley Research Center.

Neil H. MacBride, United States Attorney for the Eastern District of Virginia, made the announcement after the plea was accepted by United States Magistrate Judge Tommy E. Miller.

Biondolillo pled guilty to a one count criminal information charging her with using her official position with NASA Langley to secure and advance her husband's employment at the Langley Research Center. Sentencing has been set for Sept. 23, 2010. Biondolillo faces a maximum penalty of one year in prison and a \$100,000 fine.

In a statement of facts filed with her plea agreement, Biondolillo admitted that she was employed by NASA as a Human Resources Specialist (HRS) and Co-op Program Coordinator (CPC) at the Langley Research Center, in Hampton, Va. As part of her job, she screened USAJOBS and inquired at Langley for possible employment for her husband, Elmar R. Koldert. Thereafter, she used non-public information concerning a job opening to introduce her husband's resume to the selecting official for that position. She failed to disclose her relationship to the prospective employee and pressured university officials to expedite her husband's admission and therefore, employment at Langley. Despite being directed to not involve herself in the employment process, she



# Impartiality – Appearance of a Conflict of Interest

- 5 C.F.R. § 2635.502 – (includes two tests)

An employee is disqualified from participating a particular matter where the employee:

1. knows that a matter is likely to have a direct and predictable effect on the financial interest of a member of his household

*OR*

2. knows that a person with whom he has a covered relationship is or represents a party to such matter and the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality

*Broader application and reach than the criminal conflict of interest statute*



# Covered Relationships

- An employee has a *covered relationship* with:
  - A person, other than prospective employer, with whom the employee has or seeks a business, contractual or other financial relationship (other than routine consumer transaction);
  - Members of the household and relatives with whom the employee has a close personal relationship;
  - A person for whom the employee's spouse, parent or dependent child serves as an officer, director, trustee, general partner agent, attorney, consultant, contractor or employee;
  - Former business partners, clients, and employers (within last year or last two years if received extraordinary severance payment);
  - Organizations in which the employee is an active member.

- When there is a covered relationship, there is a presumption that the employee's interests will be





The Washington Post

# POSTPOLITICS

## Energy adviser's Solyndra stance raises ethics concerns

By Carol D. Leonnig and Joe Stephens, Published: October 8

The day after a senior Energy Department adviser was told to avoid discussing Solyndra's application for a \$535 million federal loan, he defended the solar company's reputation in an exchange with a White House aide.

Steven J. Spinner, a major fundraiser for President Obama and a Silicon Valley investor tasked with helping the government invest in clean-technology companies, had an ethical conflict: His wife worked for Wilson Sonsini, a California law firm that represented Solyndra, the solar-panel maker, in its applications for the government loan.



Last month, **FBI** agents raided the company's Fremont, Calif., headquarters in a criminal probe into suspected accounting fraud.

A senior administration official declined to comment on whether Spinner violated ethics rules. Department of Energy

spokesman Dan Leistikow said Spinner could monitor the Solyndra application, though the memo also said Spinner "would not participate in any discussion" of Solyndra's application.

"The memo says he is allowed to get status updates about clients of his wife's firm — since she wasn't receiving any financial benefit from those clients — but wasn't allowed to make decisions about those applications," Leistikow said. "Tracking the status of applications was part of his job — making decisions about those applications was not."



"You will not participate in any discussion regarding any application involving Wilson Sonsini," Rogers wrote in the ethics memorandum. "[T]his authorization [to work on loan applications] does not extend to your participation in any application in which Wilson is a party or represents a party in the matter."

Spinner's official title was small-business loan guarantee adviser, but he had political connections. He'd bundled donations for Obama's campaign and served on the administration's transition team for technology investments.

A Harvard business school alum who began his career in Europe and Asia as a business analyst for McKinsey, Spinner later moved to Menlo Park, Ca. and became an active investor and startup adviser to technology firms and entrepreneurs trying to grow their ventures. He was a founder in 2002 of Sports Potential, an educational services and sports sciences company. He married Allison Berry, then an associate at Wilson Sonsini.

Since leaving the agency, Spinner wrote of the challenges the loan-guarantee program faced, including being slow to move deals along and set up procedures for analyzing projects.

"Despite these herculean challenges, though, this 'embattled' program has by all business metrics proven an outright success," Spinner wrote in July. "Even the most controversial loan guarantee recipient — Solyndra, a solar manufacturer — is seeing an operational turnaround."

Also on Friday, Republicans on the House Energy and Commerce Committee said they were concerned with the integrity of the Energy Department's overall loan guarantee program, and called on Secretary Chu to turn over information on the financial condition of every loan guarantee funded with stimulus dollars.

Committee leaders had previously requested the financial information on Sept. 20, before the agency granted an additional \$9 billion. Energy Department officials failed to respond to the first request, the committee said. The program expired on Sept. 30.

Obama used a Thursday news conference to credit Energy Department officials with using their "best judgment" in approving the loan to Solyndra, part of a \$35.9 billion federal effort to invest in breakthrough technologies that could create jobs and spur economic growth.





# HATCH ACT



**Restrictions on Partisan Political Activities  
of Civilians**



# HATCH ACT

## Restrictions on Partisan Political Activities

**RULE:** The Hatch Act restricts partisan political activities of civilian DoD employees.

DoD policy further restricts the partisan political activities of certain political appointees.

**Military Personnel:** Have similar rules which are described in DoD Directive 1344.10, Political Activities by Members of the Armed Forces



# Hatch Act – Political Activities

- **Presumptive penalty** for violation of the Hatch Act is removal
- The Hatch Act divides employees into two categories: “more restricted” and “less restricted”
- More restricted employees includes:
  - Presidential appointees confirmed by the Senate;
  - non-career and career Senior Executive Service employees;
  - Members of the Contract Appeals Board; and
  - employees of NSA, DIA, NGA (e.g., strictly limited).



# Definitions

*Political Activity* is an activity directed toward the success or failure of:

- a political party;
- a candidate for partisan political office (beginning with fundraising or declaration of candidacy); OR
- a partisan political group

*Non-Partisan.* Any activity not associated with the success of a political party or candidate for partisan political office.



# Hatch Act Restrictions for All Employees

## Federal employees may not do any of the following:

- Use official authority or influence to interfere with an election
- Run for partisan office
- Solicit or discourage political activity of anyone with business before their agency
- Solicit or receive political contributions
- Be candidates for public office in partisan elections
- Engage in political activity while:
  - On duty
  - In a government office
  - Wearing an official uniform
  - Using a government vehicle



# Hatch Act Restrictions for “Further Restricted” Employees

- Further restricted employees may not engage in partisan political campaigning and political management:
- Examples:
  - Volunteer for a partisan political campaign
  - Make campaign speeches
  - Distribute campaign literature
  - Organize a political rally, meeting, or fundraiser
  - Hold political party office or be a party delegate
  - Participate in partisan voter registration drives
  - Circulate nominating positions

Key: No activity in concert with a political party or candidate



# Permissible Political Activities

## All Federal employees may

- Register and vote
- Make a financial contribution to a campaign
- Be a candidate for non-partisan office
- Join political clubs or parties
- Express personal opinions about candidates and issues
- Sign nominating petitions
- Attend political rallies and conventions\*
- Participate in nonpartisan activities

\*Further Restricted employees may attend but MAY NOT be involved in planning or execution of the event



# TEST YOUR KNOWLEDGE

Scenario 1: Brad receives a hilarious email that spoofs the current candidates for President on his DoD email account while at work. Has Brad violated the Hatch Act?

## POSSIBLE ANSWERS:

- No, simply receiving a partisan political e-mail while at work, does not constitute prohibited political activity as defined under the Hatch Act. However, Brad must not send or forward the e-mail to others.
- Yes, receiving any partisan emails on government computer constitutes prohibited political activity as defined under the Hatch Act.





## Hatch Act Penalty

The Office of Special Counsel (OSC) has exclusive jurisdiction over investigation and enforcement of the Hatch Act rules.

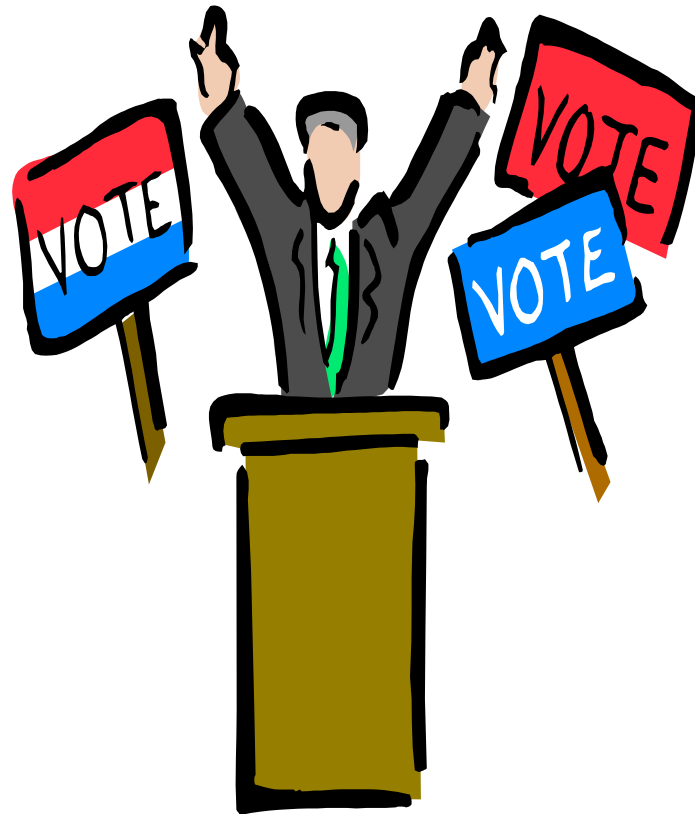
**BEWARE!** DoD civilians must scrupulously comply with the Hatch Act restrictions.

### PENALTY:

- Political Appointees. OSC will make a recommendation for discipline to the White House.
- All Others. *Removal*. For most employees, the Hatch Act imposes a presumptive penalty of removal from Federal service for a knowing violation. The minimum penalty for a Hatch Act violation is a 30-day suspension without pay.



# NOW, A QUICK WORD ON POLITICAL FUNDRAISING





# DON'T ENGAGE IN POLITICAL FUNDRAISING

Authority to do so is very limited.  
Seek ethics guidance first. PLEASE!!



# POLITICAL FUNDRAISING

Generally, DoD personnel may NOT solicit, accept, or receive political contributions in either an official or personal capacity, *except* under a narrow exception for Federal unions.

Employees are prohibited 24 hours a day, 7 days a week (except for the limitation noted above) from soliciting, accepting, or receiving political contributions.



# Office of Special Counsel Guidance on Presidential Pictures in the Workplace

- Since President Obama is a declared candidate for reelection, the Hatch Act prohibits Federal employees from displaying his picture in the Federal work space unless an exception applies
- **Official photographs exception** includes the traditional portrait photo of the President displayed in all Federal buildings and photographs of the President conducting official business, but:
  - Pictures must be displayed in a traditional size and not be altered
  - Pictures distributed by the President's campaign or a partisan organization are not official even if they depict the President performing an official act
  - Pictures downloaded from the Internet, clipped from magazines or newspapers, screen savers, and life-size cutouts are not official photographs for purposes of this exception



# Office of Special Counsel Guidance on Candidate Pictures in the Workplace

- **Personal photographs exception**
  - Applies to all candidate photographs
  - Employees may display a photograph of any candidate if all of the following apply:
    - The photograph was on display in advance of the election season
    - The employee is in the photograph with the candidate
    - The photograph is personal (*i.e.*, the employee has a personal relationship with the candidate and the photograph is taken at a personal event, *e.g.*, a wedding, and not at a campaign event or some other type of partisan political event)
    - The employee must not have a political purpose for displaying the photograph, *i.e.*, promoting or opposing a political party or a candidate for a partisan political office



# STOCK Act

## One Hundred Twelfth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,  
the third day of January, two thousand and twelve*

### An Act

To prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes.

*Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Stop Trading on Congressional Knowledge Act of 2012” or the “STOCK Act”.

#### SEC. 2. DEFINITIONS.

In this Act:

(1) MEMBER OF CONGRESS.—The term “Member of Con-



# STOCK Act



**On March 22, 2012, Congress passed the “Stop Trading on Congressional Knowledge” (STOCK) Act; President signed on April 4, 2012**

**The legislation was originally aimed at prohibiting Congressional insider trading**

**Six distinct ethics obligations added that apply to disclosure filers in the Executive Branch**





# **STOCK Act: Mortgages on Personal Residences**

- Effective immediately: FO/GO and PAS appointees must report personal residence mortgage (for 278 reports filed on or after April 4, 2012)
- Reportable mortgage info should be on Schedule C Part I (the liabilities section)
- Other public filers may continue to rely on exception in 5 C.F.R. 2634.305(b)(2), i.e., no reporting unless residence generates rent



# STOCK Act:

## Post Government Employment Notification and Recusal

- Effective immediately, all OGE 278 filers must submit a “notification statement” when engaged in negotiation for future employment, within 3 days of negotiation
- Notification statement must include:
  - employee’s signature
  - name of entities involved in negotiations
  - date negotiation commenced
- A template is available – contact OGC E&F if needed (e-mail: [usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil](mailto:usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil))
- Notification to ethics counselor and supervisor
- Must also file a recusal when there is a conflict of interest



# STOCK Act: Publishing OGE 278s to Agency Website

Effective Date: August 31, 2012 (yes, this year)

- All OGE 278 reports must be posted to Executive Branch agency websites
- Filing extensions must also be posted
- No searchable, sortable requirement for agency sites
- Agencies may NOT require viewers request access to the 278 reports
- Identity theft issue – filers should avoid including
  - PII (SSN, phone numbers, account numbers)
  - Names of accounts
  - Names of family members (use “S” and “DC”)
  - Overreporting



# STOCK Act: Periodic Transaction Reporting



- Effective Date: July 3, 2012
- All 278 filers shall report financial transactions using OGE 278-T
- Must report purchase, sale, or exchange of:
  - Stocks
  - Bonds
  - Commodities futures
  - Any other form of security
- Only report transactions where:
  - Value is greater than \$1,000
  - The employee is owner or partial owner of the security involved



# STOCK Act: Periodic Transaction Reporting



- Do not report transactions involving:
  - Real estate
  - Excepted investment funds (e.g. mutual funds)
  - Underling holdings of an excepted investment fund, qualified blind or diversified trust, or an excepted trust;
  - Treasury bills, notes, and bonds;
  - Life insurance or annuities;
  - Cash accounts;
  - Assets held in a Federal retirement program (e.g., TSP)
- Do not report transactions of a spouse or dependent child unless the employee is also an owner of the asset



# STOCK Act: Periodic Transaction Reporting



- Must be filed NLT 30 days after receiving notification of the transaction, and no later than 45 days after the transaction.
  - Recommend: review brokerage statements once per month to determine if a report is needed
  - Employees who are active traders in securities: recommend discussing the requirement with their broker or financial advisor
- Negative reports not required
- Filers must provide a copy to their supervisor and to their servicing ethics office
- “Deployment” exception will apply to the transaction reporting requirement
- Failure to timely file may result in a \$200 penalty (starting in 2013)
- Extensions are available upon showing good cause



# STOCK Act

## Coming Soon: e-filing of 278s and 450s

- Starting in Sept 2013, all OGE 450 and OGE 278 will be electronically filed
- FDM currently in wide use in DoD; unclear whether FDM will be used to meet this statutory obligation in DoD
- OGE is tasked in the statute to develop systems to enable:
  - Electronic filing;
  - Public access via posting on the public agency website;
  - Deployment of a searchable, sortable downloadable database with all filers' data.



# Seeking Employment and Post-Government Employment







# SEEKING POST-GOVERNMENT EMPLOYMENT



**Basic Rule:** When seeking non-Federal employment, employees MUST:

- Disqualify from official participation
- In any particular matter
- That has a direct and predictable effect on the financial interests
- Of entities with whom the employee is discussing future employment.

VIOLETIONS CAN BE PROSECUTED.



# SEEKING POST-GOVERNMENT EMPLOYMENT



## Reporting non-Federal employment contacts

- Employees who are personally and substantially involved in an acquisition over the simplified acquisition threshold (>\$100,000) must
  - Report employment **contacts** with bidders or offerors
    - Contact = communication about prospective employment
    - Report must be in writing
    - Report to supervisor and an ethics counselor
  - Disqualify from future participation in the matter, unless the contact is immediately rejected.
- STOCK Act requires OGE 278 filers to provide written notice to their ethics counselor within 3 days of negotiating for employment, and if necessary, a written recusal.



# Post-Government Employment Restrictions

18 U.S.C. § 207

- Statute prohibits prior employees from communication with, or appearance before the Federal government – but only in certain situations.
- Applies to interaction with Federal officials on behalf of another person or entity.



# Post-Government Employment Representational Bans

## 18 U.S.C. § 207

- Lifetime Ban: Bars all former employees from representing another before any Federal agency or court regarding particular matters involving specific parties in which they participated personally and substantially at anytime during Federal service. “Lifetime” means the lifetime of the particular matter (e.g. contract).
- 2-Year Ban: Bars all former employees from representing before any Federal agency or court regarding particular matters involving specific parties that were under their official responsibility during their last year of Federal employment.
- 1-Year Cooling Off: Bars “Senior Employees” for one year after leaving a senior position from representing another before their former agency to seek official action. This is **2 years** for political appointees of the Obama Administration.



# Post-Government Employment: Procurement Integrity

- One year ban on receipt of compensation from \$10M contractor if the former employee did any of the following on that contract:
  - Served as a procuring contract officer, source selection authority, member of a source selection evaluation board, or chief financial or technical evaluation team;
  - Served as a program manager, deputy program manager, or administrative contracting officer;
  - Personally made decisions in excess of \$10M to award contracts, subcontracts, or modifications of contracts or subcontracts, task or delivery orders; to establish overhead or other rates; to approve contract payment or payments; or to settle claims
- This compensation ban applies to prime contractors



# Post-Government Employment: Procurement Integrity

- 2008 NDAA § 847 requires certain current and former DoD personnel to request written post-employment advice if they want to receive compensation from a DoD contractor within **two years** from the date of leaving government.
- Covered officials:
  - Members of the SES and General / Flag officer positions
  - Who participated personally and substantially in an acquisition with a value in excess of \$10 million; or
  - Employees who serve in one of the following positions: program manager; deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of a source selection evaluation board or chief or a financial or technical evaluation team for a contract in excess of \$10 million.
- DoD contractors may not pay these individuals until 30 days following their request for the ethics opinion or the date they receive the opinion, whichever occurs first.



# Post-Government Employment: Bottom Line

These are complicated criminal restrictions –  
SO – if you

- Plan to start looking and / or
- Plan to interact with the Federal government after you leave –

*PLEASE* contact our office for advice:

E-mail:

[usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil](mailto:usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil)



# Contact OGC E&F

E-Mail:

[usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil](mailto:usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil)